

## **SUBCOMMITTEE NO. 4**

## **Agenda**

**Michael J. Machado, Chair**  
**Robert Dutton**  
**Christine Kehoe**



***Senate Budget and Fiscal Review Subcommittee #4 on State Administration,  
General Government, Judicial and Transportation***

***February 28, 2007***

***9:30 a.m.***

***Room 113***

***Juvenile Offender Realignment:  
What Makes a Successful Juvenile Justice System?***

1. *Bernard Warner*, Director  
Division of Juvenile Justice  
*Zlatko Theodorovic*, Assistant Program Budget Manager  
Department of Finance
2. *Daniel Carson*, Director  
*Peg Ritchie*, Principal Fiscal and Policy Analyst  
Legislative Analyst's Office
3. *David Steinhart*, Director  
Juvenile Justice Program at Commonweal
4. *Kim Barrett*, Chief Probation Officer  
San Luis Obispo County  
*Jerry Powers*, Chief Probation Officer  
Stanislaus County
5. *Robertta Burns*, County Executive Officer  
Imperial County

## Overview of California's Juvenile Justice System

**Overview of Juvenile Justice System.** For the most part, the Juvenile Justice system in California is managed and funded by local government. Following the arrest of a juvenile, law enforcement has the discretion to release the juvenile to his or her parents or to take the suspect to juvenile hall and refer the case to the county probation department.

Generally, probation officials decide how to process the cases referred to them and about one-half of the cases referred to probation result in the filing of a petition with the juvenile court for a hearing. Judges declare the juvenile a ward of the court almost two-thirds of the time. The vast majority of wards (over 98 percent) are placed under the supervision of the county probation department. These youth are typically placed in a county facility for treatment (such as juvenile hall or camp) or supervised at home. Other wards are placed in foster care or a group home.

A small number of wards (under 2 percent annually) are committed to the California Department of Corrections and Rehabilitation's (CDCR) Division of Juvenile Justice (DJJ) (previously known as the California Youth Authority or CYA) and become a state responsibility. The population sent to DJJ is generally the State's most serious and chronic juvenile offenders, but this may vary by county. In addition, juveniles tried in adult criminal court for particularly serious or violent crimes are placed in a DJJ facility until their 18th birthday, at which time they are transferred to state prison for the remainder of their sentence. The CDCR currently operates eight juvenile correctional facilities and one conservation camp.

## Population Trends

**State Juvenile Offender Population.** Over the past decade, the population in DJJ facilities has declined significantly from just under 9,000 wards to fewer than 2,900 wards as of June 30, 2006. The declining admissions are due largely to the decline in juvenile arrest rates and the implementation by counties of more alternatives to incarceration.

The state juvenile parole population has also declined significantly from just over 6,000 juvenile parolees to a little over 3,100 parolees as of June 30, 2006. These declines are consistent with the declining institution population.

**County Juvenile Offender Population.** Over the past decade, the population of juvenile offenders in county facilities has also declined but much less than the state population. The current population of juvenile offenders incarcerated at the county level is about 11,000 youth -- down 4 percent from levels in the late 1990s. As stated above, this decline is primarily due to the decrease in juvenile arrest rates and the implementation by counties of more alternatives to incarceration.

## State-Local Funding Relationship

**Current State-Local Funding Relationship.** Counties started implementing more alternatives to incarceration for juvenile offenders after the passage of legislation in 1996 (SB 681, Hurtt) that made major changes to the cost sharing arrangement between counties and the state for housing juvenile offenders in state DJJ facilities. First, it increased the flat fee that counties pay from \$25 per month for the most serious and violent offenders; and second, it also established a “sliding scale” fee structure which adjusts the amount that counties pay monthly based upon the offense on which the commitment is based.

The Youthful Offender Parole Board, within CDCR, assigns a category to a juvenile offender based upon the seriousness of their commitment offense. The categories range from I to VII with VII being the least serious commitment. Current statute requires counties to pay a flat fee of \$176 per month for the more serious juvenile offenders considered Level I through Level IV offenders. Statute requires counties to pay the following sliding scale fees for the least serious commitments (categories V through VII):

- **Level V** – 50 percent of the per capita institutional cost
- **Level VI** – 75 percent of the per capita institutional cost
- **Level VII** – 100 percent of the per capita institutional cost

The 2007-08 per capita institutional cost is calculated at \$39,579 (\$36,504 in statute and adjusted annually for inflation). This is significantly less than the per capita costs estimated in the 2007-08 budget proposal (\$216,081). Therefore, counties pay only a fraction of the per capita institutional costs of incarcerating a juvenile offender in a state DJJ facility. Furthermore, counties do not have to pay for parolees that have had their parole revoked.

The sliding scale was further impacted by the passage of Proposition 21 in 2000 that exempted counties from paying a sliding scale fee for commitments of persons actively participating in any criminal street gang and/or for persons convicted of a felony committed in association with any criminal street gang (as put forth in Penal Code 186.22 (a) and (b)).

**Other State-Funded Local Programs.** The state also funds the Juvenile Justice Crime Prevention Act which allocates \$119 million from the General Fund to fund community-based programs that have proven effective in reducing crime and delinquency among at-risk youth and juvenile offenders. The allocation to each county is based upon a formula created by the Department of Finance.

## 2007-08 Governor’s Juvenile Justice Budget Proposal

**Budget Summary.** The Governor’s budget proposal includes \$523 million to fund the juvenile institution and parole operations. This is about \$8 million or 1.5 percent less than estimated expenditures in the current year due to a major proposal (described below) to realign a portion of the juvenile population to the locals. The DJJ per capita costs for 2007-08 are projected to be \$216,081 annually.

**Farrell Lawsuit.** In 2004, the state settled *Farrell v. Tilton* that alleged poor conditions of confinement and a lack of treatment services for youth housed in DJJ institutions. As a result of this lawsuit, the state agreed to review the entire system and reform the programs provided to juvenile offenders. Beginning in 2005-06, the DJJ began implementing reforms as stipulated by the *Farrell* consent decree in the following areas:

- Mental Health
- Sex Behavior
- Disability
- Education
- Medical Care
- Safety and Welfare

The state has allocated about \$166 million (\$18 million one-time) General Fund over the past two budget years to comply with the *Farrell* lawsuit. The Governor's budget includes \$4.8 million in additional monies to implement the Safety and Welfare and Mental Health Remedial Plans.

## State Juvenile Population Estimates

**State Juvenile Offender and Parolee Population Estimates.** The Governor's budget estimates that the ward population in DJJ facilities will decline about 14 percent by the end of the budget year from actual population levels as of June 30, 2006. This decline is primarily the result of fewer juvenile court commitments to state facilities. The budget assumes that the ward population will decrease from just fewer than 2,900 wards on June 30, 2006 to about 2,500 wards by the end of the budget year. These baseline projections do not reflect the administration's proposal to shift a sizeable portion of the ward population to the counties.

The budget also estimates a 24 percent decline in the juvenile parole population by the end of the budget year from actual parole numbers as of June 30, 2006. This decline is primarily due to the continuing declines in the DJJ population. The budget assumes that the parole population will decrease from over 3,100 parolees as of June 30, 2006 to about 2,400 parolees by the end of the budget year. These projections also do not reflect the administration's proposal to shift a portion of the ward population to the counties.

The Governor's budget proposes to reduce the estimate of expenditures in the current year by \$10.5 million because of significant delays in implementing the smaller living unit and staffing ratios required to comply with the *Farrell v. Tilton* lawsuit. As a result of this delay, there is an overall increase in funding of \$5.8 million General Fund proposed for the budget year. This funding will enable the department to continue implementation of the requirements of the remedial plans under the *Farrell v. Tilton* lawsuit.

**LAO Finds Estimate High.** The LAO finds that recent population data indicates that the number of wards in DJJ institutions is more than 100 wards below the previously budgeted levels. If this trend holds, the LAO indicates that there may be \$10 million in savings in the current year and as much as \$20 million in savings in the budget year. Given that the lower

population trends are recent, the LAO withholds recommendation on the DJJ population estimate pending receipt of the May Revision estimates.

## Population Shift

**Governor's Budget Proposal.** The Governor has put forth a budget proposal that would reduce the DJJ population by about half by realigning certain juvenile offenders to local juvenile facilities. Specifically, beginning July 1, 2007, the state would stop accepting and would return certain non-violent juvenile offenders now held in DJJ institutions to the local level. Also, the state would provide a new block grant program to offset county costs resulting from this change.

Under this proposal, wards could only be committed to DJJ if they committed an offense described in Welfare and Institutions Code (WIC) 707(b). The list of offenses under WIC 707(b) is detailed in Appendix A of this report. Furthermore, the proposal would bar the commitment of female wards to DJJ. State law would be modified to: (1) stop the intake of all wards that did not commit WIC 707(b) offense as of July 1, 2007; and (2) recall, to the county, offenders currently held in DJJ facilities that were not committed for WIC 707(b) offenses. State law would also be amended to stop intake of all female wards and transfer female offenders currently housed at Ventura Youth Correctional Facility to the counties. (Under *Farrell* remediation plans, the state had been preparing to contract out for services to house the female population at DJJ.) The Governor's budget proposal assumes that this realignment will result in about 1,400 fewer wards in DJJ facilities by the end of the budget year.

The Governor's proposal also includes a block grant to counties to offset the costs of keeping custody and taking custody of juvenile offenders previously held by DJJ. The Governor's budget proposes \$53.3 million for a block grant that is equivalent to \$94,000 per offender per year. The department has indicated that this grant would be allocated to counties based on a 10 year history of the offenders each county has committed. The administration indicates that the \$94,000 grant level represents an estimate of what the per capita expenditures were before the state started to implement reforms to comply with the *Farrell* lawsuit in 2005-06. This amount is not based on actual county costs to incarcerate juvenile wards.

The Governor's proposal also eliminates the \$10 million Juvenile Justice Community Reentry Challenge Grant Program that was created in the 2006-07 Budget Act. This proposal would have assisted juvenile offenders in their reentry from institutions into the community.

**Fiscal Impact of Governor's Proposal.** The Governor's budget proposal assumes \$96.2 million General Fund in the budget year by shifting juvenile offenders from DJJ facilities to the local level and by eliminating the Juvenile Justice Community Reentry Challenge Grant Program. This savings is offset by \$53.3 million General Fund for a new block grant to offset local costs of keeping custody and taking custody of juvenile offenders previously held by DJJ. This would result in a net General Fund savings of \$42.9 million in the budget year.

**Impact of Governor's Proposal on Sliding Scale Revenues.** The Governor's budget estimates \$15.8 million in revenues from county sliding scale payments for incarceration of Level V through Level VII offenders in DJJ facilities. This is about \$900,000 less than the revenues the

administration expects to receive in the current year. It is unclear how these revenues would be impacted by this proposal. However, it is likely that the number of “sliding scale” offenders, categories V through VII committed to DJJ, would decline since they tend to be the less serious commitments. This would result in a reduction in revenues to the state and a net gain to the counties above the proposed block grant amount (\$94,000 per ward).

**LAO Finds Issues with Proposal.** Overall, the LAO finds that it would be good criminal justice policy to adopt a proposal to realign certain juvenile offenders to county facilities. However, the LAO has also identified several issues with the Governor’s proposal. The issues are as follows:

- State savings of adopting the proposal are understated.
- DJJ staff positions are not reduced.
- A facility closure plan has not been submitted.
- Other budget requests for new equipment and special repair projects are not consistent with this proposal.
- The *Farrell* remedial plans have not been adjusted for this proposal.
- No data is available on actual county costs of operation of juvenile institutions and programs.
- No statutory framework has been proposed for the new block grant proposal.
- The proposal does not consider relative efficiencies of shifting parole responsibilities to county probation officers.

**LAO Recommendations.** The LAO has made several recommendations related to this proposal. The recommendations include the following:

- Approve the population shift plan, with adjustments to net budget savings.
- Request that DJJ report to the Legislature on preliminary plans for DJJ facility closures and recommend the adoption of trailer bill language to provide the Legislature with a DJJ facility closure plan at least 30 days before closures are to begin.
- Request that the administration report to the Legislature on adjustments needed to other CDCR budget requests, including maintenance, special repair projects, and *Farrell* remedial plans.
- Review and appropriately adjust the amount proposed in the block grant so that it: (1) is sufficient to offset county costs; (2) provides a financial incentive for counties to concur in this shift of offenders; and (3) maximizes the potential savings to the state General Fund from these changes.
- Request that the administration provide a statutory framework for the block grant that clearly identifies the permitted use of the funds; establishes that the funds are subject to audit; makes clear the penalties for their misallocation; and indicates how the level of funding for these grants would be determined in future years.
- Request that DJJ report, at budget hearings, on the feasibility and advisability of: (1) discontinuing its parole supervision of offenders released from DJJ institutions; and (2) shifting an appropriate level of state funding to counties to fully offset the costs of absorbing supervision of these offenders into county probation operations.

## Juvenile Facility Bond

**Revenue Bond for Local Juvenile Facilities.** The Governor has proposed \$500 million for local juvenile facilities, including \$400 million from state lease revenues bonds and \$100 million in local matching funds. The administration estimates that these funds will build 5,000 new juvenile beds at a cost of \$100,000 per bed.

**LAO Recommendation.** The LAO recommends that the Legislature reject the proposal to allocate \$400 million in state lease revenue bonds to construct additional local juvenile facilities. The LAO finds that the current proposal to provide additional resources to build local juvenile facilities was not based on an independent validation of the needs of local law enforcement. Furthermore, the LAO finds that the current county juvenile justice system has a surplus of beds in both juvenile halls and camps of about 4,000 beds. The LAO recognizes that some modifications may be needed, to existing space at the county level, to modernize and provide for more specialized treatment space, but they indicate that this can be done for less than \$100,000 per bed.

## Appendix A

**Welfare and Institutions Code 707(b) Offenses.** Under the Governor's proposal the DJJ system would only allow male wards that have committed offenses under Welfare and Institutions Code 707(b). The offenses specified in this code section are listed below:

- Murder
- Arson (Penal Code 451(a) or (b))
- Robbery
- Rape with force or violence or threat of great bodily harm
- Sodomy by force, violence, duress, menace, or threat of great bodily harm
- Lewd or lascivious act (Penal Code 288(b))
- Oral copulation by force, violence, duress, menace, or threat of great bodily harm
- Sexual penetration (Penal Code 289(a))
- Kidnapping for ransom
- Kidnapping for purpose of robbery
- Kidnapping with bodily harm
- Attempted murder
- Assault with a firearm or destructive device
- Crimes against the elderly and disabled (Penal Code 1203.09)
- Crimes involving a firearm (Penal Code 12022.5 or 12022.53)
- Any felony with a weapon listed in Penal Code 12020(a)
- Any felony related to preventing or dissuading a witness or victim from giving testimony (Penal Code 136.1 or 137)
- Manufacturing, compounding, or selling one-half ounce or more of any salt or solution of a controlled substance specified in Health and Safety Code 11055(e)
- Any violent felony (Penal Code 667.5(c)) in connection with a criminal street gang that is also a felony violation under Penal Code 186.22(b)
- Escape by use of force or violence from any county juvenile hall, home, ranch, camp, or forestry camp where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.
- Torture (Penal Code 206 and 206.1)
- Aggravated mayhem (Penal Code 205)
- Carjacking (Penal Code 215)
- Kidnapping (Penal Code 208 (d))
- Kidnapping (Penal Code 209.5)
- Willfully and maliciously discharging a firearm from a motor vehicle (Penal Code 12034 (c))
- Voluntary manslaughter (Penal Code 192)